



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2015-0850; FRL-9971-17-Region 6]**

**Approval and Promulgation of Air Quality Implementation Plans; New Mexico;  
Infrastructure and Interstate Transport for the 2012 Fine Particulate Matter National  
Ambient Air Quality Standard and Revised Statutes**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of New Mexico to address the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for 2012 fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS). The revisions address how the existing SIP provides for implementation, maintenance, and enforcement of PM<sub>2.5</sub> (infrastructure SIP or i-SIP). Under CAA sections 110(a)(1) and 110(a)(2), each state is required to submit a SIP that provides for the implementation, maintenance, and enforcement of a revised primary or secondary NAAQS. CAA section 110(a)(1) and (2) require each state to make a new SIP submission within three years after EPA promulgates a new or revised NAAQS for approval into the existing SIP to assure that the SIP meets the applicable requirements for such new and revised NAAQS. This type of SIP submission is commonly referred to as an “infrastructure SIP or “i-SIP.” We propose approval of this action under Section 110 of the Act. EPA is also proposing to approve a SIP revision to update the New Mexico statutes incorporated into the SIP.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2015-0850, at <http://www.regulations.gov> or via email to [fuerst.sherry@epa.gov](mailto:fuerst.sherry@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Sherry Fuerst, (214)665-6454, [fuerst.sherry@epa.gov](mailto:fuerst.sherry@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI)

**FOR FURTHER INFORMATION, CONTACT:** Sherry Fuerst, (214) 665-6454, [fuerst.sherry@epa.gov](mailto:fuerst.sherry@epa.gov). To inspect the hard copy materials, please schedule an appointment with

her or Bill Deese at (214) 665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” or “our” mean EPA.

## **I. Background**

On December 14, 2012 we promulgated a revised primary annual PM<sub>2.5</sub> NAAQS of 12.0 µg/m<sup>3</sup> (78 FR 3085, January 15, 2013), and we retained the primary 24-hour PM<sub>2.5</sub> standard of 35 µg/m<sup>3</sup> and the secondary standards. Primary standards are set to protect human health while secondary standards are set to protect public welfare.

Pursuant to section 110(a)(1) of the CAA, states are required to submit an i-SIP within three years after the promulgation of a new or revised NAAQS. Section 110(a)(2) of the CAA includes a list of specific elements the i-SIP must include to adequately address such new or revised NAAQS as applicable. EPA issued guidance addressing the i-SIP elements for NAAQS.<sup>1</sup> The New Mexico Environment (NMED) and Albuquerque-Bernalillo County each provided demonstrations of how the existing New Mexico SIP meets the applicable 110(a)(2) requirements for the 2012 PM<sub>2.5</sub> NAAQS on August 6, 2015 and December 8, 2015, respectively. Our technical evaluation of these submittals is provided in the Technical Support Document (TSD), which is in the rulemaking<sup>2</sup>.

Additionally, NMED provided updated statutes for the SIP. Sections 110(a)(2)(E)(ii) and 128 of the CAA require SIPs to contain statutory or regulatory provisions that: (1) Any board or body which approves permits or enforcement orders under the CAA have at least a majority of

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<sup>1</sup> “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2),” Memorandum from Stephen D. Page, September 13, 2013.

<sup>2</sup> A detailed discussion of our evaluation can be found in the TSD for this action. The TSD can be accessed through [www.regulations.gov](http://www.regulations.gov) (e-docket EPA-R06-OAR-2015-0850).

its members represent the public interest and not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA; and (2) any potential conflict of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

## **II. EPA's Evaluation of New Mexico's and Albuquerque-Bernalillo County's NAAQS Infrastructure Submissions**

The State's submissions on August 6, 2015 and December 8, 2015, demonstrate how the existing New Mexico SIP meets the infrastructure requirements for the 2012 PM<sub>2.5</sub> NAAQS. A detailed discussion of our evaluation can be found in the Technical Support Document TSD for this action. The TSD can be accessed through [www.regulations.gov](http://www.regulations.gov) (e-docket EPA-R06-OAR-2015-0850). Below is a summary of EPA's evaluation of the New Mexico i-SIP and Albuquerque-Bernalillo County i-SIP for each applicable element of 110(a)(2) A-M.

*(A) Emission limits and other control measures:* The CAA § 110(a)(2)(A) requires the SIP to include enforceable emission limits and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act and other related matters as needed to implement, maintain and enforce each of the NAAQS.<sup>3</sup> The New Mexico *Environmental Improvement Act* (EIA), codified in Chapter 74, Article 1 of the New Mexico Statutes Annotated 1978 (NMSA), created

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<sup>3</sup> The specific nonattainment area plan requirements of CAA section 110(a)(2)(I) are subject to the timing requirements of CAA section 172, not the timing requirement of CAA section 110(a)(1). Thus, CAA section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2012 PM<sub>2.5</sub> NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of CAA section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

the New Mexico Environment Department (NMED) and the New Mexico Environmental Improvement Board (EIB). Statutory authority for Albuquerque-Bernalillo County's air quality program, codified in Chapter 74 EIA, Article 2, *Air Pollution*, of the New Mexico statutes, gives the Air Board and Albuquerque Environmental Health Department's Air Quality Program (AQP) the authority to implement the CAA in Albuquerque-Bernalillo County, New Mexico. NMED has jurisdiction over all of New Mexico except for Albuquerque-Bernalillo County. We will distinguish between these two authorities by referring to them as NMED, EIB or the State for everywhere outside of Albuquerque-Bernalillo County and as AQP or the Air Board as everything pertaining to within Bernalillo County.

The New Mexico *Air Quality Control Act* (AQCA) codified at NMSA 1978, Subpart 74-2 et seq., delegates authority to the EIB to adopt, promulgate, publish, amend and repeal regulations consistent with the AQCA to attain and maintain the NAAQS and prevent or abate air pollution. The AQCA also designates the NMED as the State's air pollution control agency and the EIA provides NMED with enforcement authority everywhere within the State of New Mexico excluding Albuquerque-Bernalillo County. Chapter 2 Title 20 of the New Mexico Administrative Code (NMAC) establishes NMED as the State's air pollution control agency (within the State of New Mexico excluding Albuquerque-Bernalillo County) and establishes its enforcement authority, referencing the NMSA 1978 (44 FR21019, April 9, 1979; revised 49 FR 44101, November 2, 1984; recodification approved in 62 FR 50518, September 26, 1997, approving various statutory and regulatory provisions in New Mexico's SIP). This authority has been employed to adopt and submit multiple revisions to the New Mexico SIP.

With regard to Albuquerque-Bernalillo County, enforceable emission limitations and other control measures are authorized by the New Mexico AQCA which established the Air

Board and those provisions of NMAC Title 20, *Environmental Protection*, Chapter 11, *Albuquerque-Bernalillo County Air Quality Control Board*. It can adopt emission standards and compliance schedules applicable to regulated entities; emission standards and limitations and any other measures necessary for attainment and maintenance of national standards; and, enforce applicable laws, regulations, standards and compliance schedules, and seek injunctive relief within the boundaries of Bernalillo County. This authority has been employed to adopt and submit multiple revisions to the Albuquerque-Bernalillo County, New Mexico SIP. The approved SIP for the State of New Mexico, including Albuquerque-Bernalillo County is documented at 40 CFR Part 52.1620, Subpart GG.<sup>4</sup> EPA is therefore proposing to find that the New Mexico SIP meets the requirements of section 110(a)(2)(A) of the Act with respect to 2012 PM<sub>2.5</sub>.

(B) *Ambient air quality monitoring/data system*: Section 110(a)(2)(B) of the CAA requires SIPs to include provisions for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request.

The AQCA provides the authority allowing EIB, NMED and AQP to collect air monitoring data, quality-assure the results, and report the data (NMSA 1978, 74-2-5.1(B)). New Mexico and AQP each maintain and operate PM<sub>2.5</sub> networks to measure ambient levels. All monitoring data is measured using EPA approved methods and subject to the EPA quality assurance requirements. NMED and AQP submit all required data to EPA, following the EPA rules. These networks have been approved into the SIP (46 FR 4005, August 6, 1981) and they

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<sup>4</sup><http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=d13cf1de493c65047374561758ed5ea3&mc=true&r=PART&n=pt40.4.52#sp40.4.52.g>

undergo recurrent annual review by EPA.<sup>5</sup> In addition, NMED and AQP conduct recurrent assessments of their monitoring networks every five years, which includes an evaluation of ambient monitoring for PM<sub>2.5</sub>, as required by EPA rules. The most recent of these 5-year monitoring network assessments were conducted by NMED and AQP in 2015 and EPA reviewed and commented on these reviews. The comment letter is in the docket.<sup>6</sup> The NMED and AQP websites provide the monitor locations and posts past and current concentrations of criteria pollutants measured in these network of monitors.<sup>7</sup>

In summary, New Mexico and Albuquerque- Bernalillo County meet the requirement to establish, operate, and maintain an ambient air monitoring network; collect and analyze the monitoring data; and make the data available to EPA upon request. EPA is proposing to find that the current New Mexico SIP meets the requirements of section 110(a)(2)(B) with respect to 2012 PM<sub>2.5</sub>.

*(C) Program for enforcement of control measures:* The CAA § 110(a)(2)(C) requires SIPs include the following three elements: (1) a program providing for enforcement of the measures in paragraph A above; (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS (i.e., state-wide permitting of minor sources); and (3) a permit program to meet the major source permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question).<sup>8</sup>

*(1) Enforcement of SIP Measures.* As noted in (A), the AQCA provides authority for the

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<sup>5</sup> A copy of the 2016 Annual Air Monitoring Network Plan and EPA's approval letter are included in the docket for this proposed rulemaking.

<sup>6</sup> A copy of the 2015 5-year ambient monitoring network assessment and EPA's approval letter are included in the docket for this proposed rulemaking.

<sup>7</sup> see <https://www.env.nm.gov/aqb/monitor/airmonitoringnetwork.html>

<sup>8</sup> As discussed in further detail in the TSD.

EIB, NMED and AQP to enforce the requirements of the AQCA within Albuquerque-Bernalillo County and New Mexico, and any regulations, permits or final compliance orders. Its statutes also provide the EIB, NMED and AQP with general enforcement powers. Among other things, they can file lawsuits to compel compliance with statutes and regulations; commence civil actions; issue field citations, conduct investigations of regulated entities; collect criminal and civil penalties; develop and enforce rules and standards related to protection of air quality; issue compliance orders; pursue criminal prosecutions; investigate, enter into remediation agreements; and issue emergency cease and desist orders. The AQAC also provides additional enforcement authorities and funding mechanisms. (NMSA 1978, sections 74-2-12, 74-2-2, and 74-1-6.F.

(2) *Minor New Source Review*. Section 110(a)(2)(C) also requires that the SIP include measures to regulate construction and modification of stationary sources to protect the NAAQS. Both the New Mexico (78 FR 15296, March 11, 2013) and Albuquerque-Bernalillo County (69 FR 78312, December 30, 2004) minor NSR permitting requirements are approved as part of the SIP.<sup>9</sup>

(3) *Prevention of Significant Deterioration (PSD) permit program*. Both Albuquerque-Bernalillo County (80 FR 52401, August 31, 2015) and New Mexico (78 FR 15296, March 11, 2013) PSD program portions of the SIP cover all NSR regulated pollutants as well as the requirements for the 2012 PM<sub>2.5</sub> NAAQS and have been approved into the SIP by EPA.<sup>10</sup>

(D) *Interstate and international transport*: Under CAA section 110(a)(2)(D)(i), there are

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<sup>9</sup> EPA is not proposing to approve or disapprove the existing New Mexico or Albuquerque-Bernalillo County minor NSR programs to the extent that it may be inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for EPA to approve the infrastructure SIP for element C (e.g., 76 FR 41076-41079, July 13 2011). EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. The statutory requirements of CAA section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs.

<sup>10</sup> As discussed further in the TSD



four requirements the SIP must include relating to interstate transport. The first two of the four requirements are outlined in CAA section 110(a)(2)(D)(i)(I) and require that the SIP contain adequate provisions prohibiting emissions to other states which will (1) contribute significantly to nonattainment of the NAAQS, and (2) interfere with maintenance of the NAAQS. The third and fourth requirements are outlined in CAA section 110(a)(2)(D)(i)(II) and require that the SIP contain adequate provisions prohibiting emissions to other states which will (1) interfere with measures required to prevent significant deterioration or (2) interfere with measures to protect visibility.

Both SIP revision submittals included the same attachment with the evaluation of CAA section 110(a)(2)(D)(i)(I). This evaluation considered the following factors:

- An analysis of the most recent annual PM<sub>2.5</sub> design values to determine which areas near New Mexico violate, or are close to violating the 2012 annual PM<sub>2.5</sub> NAAQS;
- An analysis of the PM<sub>2.5</sub> annual design value trends in New Mexico (including Bernalillo County) to determine if the PM<sub>2.5</sub> concentrations in New Mexico are increasing or decreasing; and,
- An investigation of PM<sub>2.5</sub> annual design value trends in other states to determine whether PM<sub>2.5</sub> concentrations in those areas are increasing or decreasing.

This evaluation concluded that New Mexico did not significantly contribute to nonattainment or interfere with maintenance of the PM<sub>2.5</sub> NAAQS in other states.

On March 17, 2016 EPA issued a memo providing information on the development and review of SIPs that address CAA section 110(a)(2)(D)(i) for the 2012 PM<sub>2.5</sub>.<sup>11</sup> We used the information in the memo and additional supplemental information for our evaluation and came to the same conclusion as the state. In our evaluation, potential downwind nonattainment and maintenance receptors were identified. These potential receptors were evaluated to determine if New Mexico emissions could possibly contribute to the attainment challenges. After reviewing

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<sup>11</sup> March 17, 2016 information memo “Information on the Interstate Transport “Good Neighbor” Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)”

air quality reports, modeling reports, designation letters, designation technical support documents, attainment plans and other reports for these areas, EPA is proposing to approve the SIP revisions as meeting the CAA section 110(a)(2)(i)(I) requirement that New Mexico (including Albuquerque-Bernalillo County) emissions will not interfere with maintenance or contribute significantly to nonattainment of the 2012 PM<sub>2.5</sub> NAAQS for any other state.

With regard to CAA section 110(a)(2)(D)(i)(II), both New Mexico and Albuquerque-Bernalillo County state that as noted in Element C above, they each have a comprehensive EPA-approved PSD and regional haze programs. As we have approved both New Mexico and Albuquerque-Bernalillo County comprehensive PSD programs (80 FR 40915, July 14, 2015 and 80 FR 52402, August 31, 2015, respectively) and regional haze plans (79 FR 60992, October 9, 2014, 77 FR 71119, November 29, 2012, respectively), we propose to approve the revisions pertaining to CAA section 110(a)(2)(D)(i)(II). A more detailed evaluation of how the SIP revisions meet the requirements of CAA section 110(a)(2)(D)(i) may be found in the TSD.

CAA section 110(a)(2)(D)(ii) requires that the SIP contain adequate provisions insuring compliance with the applicable requirements of sections 126 (relating to interstate pollution abatement) and 115 (relating to international pollution abatement). As stated in their submittals, New Mexico and Albuquerque-Bernalillo County meet the section 126 requirements as (1) they have fully approved PSD SIPs (Albuquerque-Bernalillo County 80 FR 52401, August 31, 2015 and New Mexico 78 FR 15296, March 11, 2013) which include notification to neighboring air agencies of potential impacts from each new or modified major source and (2) no source or sources have been identified by the EPA as having any interstate impacts under section 126 in any pending action related to any air pollutant. New Mexico and Albuquerque-Bernalillo County meet section 115 requirements as there are no findings by EPA that New Mexico or

Albuquerque-Bernalillo County air emissions affect other countries. Therefore, we propose to approve the submitted revisions pertaining to CAA section 110(a)(2)(D)(ii).

*(E) Adequate authority, resources, implementation, and oversight:* CAA 110(a)(2)(E) requires that the SIP provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) Compliance with requirements relating to state boards as required under section 128 of the CAA; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan. Both elements (A) and (E) address the requirement that there is adequate authority to implement and enforce the SIP and that there are no legal impediments.

The i-SIP submissions for the 2012 PM<sub>2.5</sub> NAAQS describe the SIP regulations governing the various functions of personnel within the EIB, NMEQ, AQP and the Air Board, including the administrative, technical support, planning, enforcement, and permitting functions of the program. (NMSA 1978, sections 9-7A-6(B)(4), 9-7A-11A, 74-2-5.1(F) and 74-2-5.2)

With respect to funding, the AQCA requires NMED to establish an emissions fee schedule for sources in order to fund the reasonable costs of administering various air pollution control programs and authorizes NMED to collect additional fees necessary to cover reasonable costs associated with processing of air permit applications (NMSA 1978, sections 9-7A-6(B)(4), 9-7A-11A, 74-2-5.1(F) and 74-2-5.2). EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to among other things implement and enforce the SIP. With respect to funding for AQP and the Air Board, the resources to carry out the plan are

provided through General Funds, Permit Fees and the CAA grant process. Permit Fees are collected under the authority of NMSA 1978 section 74-2-7.

As required by § 110(a)(2)(E)(ii) of the CAA, and the EIA, the SIP must stipulate that any board or body, or head of agency with similar powers adequately disclose any potential conflicts of interest. NMSA 1978 section 74-1-4 provides the Air Board, contain at least a majority of members who represent the public interest and do not derive any "significant portion" of their income from persons subject to permits and enforcement orders or who appear before the board on issues related to the CAA or AQCA. The members of the board or body, or the head of an agency with similar powers, are required to adequately disclose any potential conflicts of interest.

With respect to assurances that the State and the Air Board have responsibility to implement the SIP adequately when it authorizes local or other agencies to carry out portions of the plan, the EIA and the AQCA designate the NMED and the Air Board (within Albuquerque-Bernalillo County) as the primary air pollution control agencies. The statutes allow for local agencies to carry out some or all the Act's responsibilities (NMSA 1978 section 74-2-4.D).

There is one local air quality control agency, the Air Board, which assumes jurisdiction for local administration and enforcement of the AQCA in Bernalillo County. There are Albuquerque-Bernalillo County SIP provisions which are part of the New Mexico SIP<sup>12</sup>.

*(F) Stationary source monitoring system:* CAA § 110(a)(2)(F) requires the SIP provide for the establishment of a system to monitor emissions from stationary sources and to submit periodic emission reports. It must require the installation, maintenance, and replacement of

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<sup>12</sup> Albuquerque/Bernalillo County SIP 40CFR Part 52.1620(e)  
<https://www.ecfr.gov/cgi-bin/text-idx?SID=5388fc4e0e68b29abfaeccc68fca9&mc=true&node=sp40.4.52.gg&rgn=div6>

equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from such sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and require that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

The AQCA authorizes the NMED and Air Board to require persons engaged in operations which result in air pollution to monitor or test emissions and to file reports containing information relating to the nature and amount of emissions NMSA 1978 section 74-2-5(C)(6). There also are SIP-approved state regulations pertaining to sampling and testing and requirements for reporting of emissions inventories (20.2 NMAC Parts 5,7-8, 10-20, 30-34, 40-41, and 72-74. In addition, SIP rules establish general requirements for maintaining records and reporting emissions (20 NMAC Part 11.47).

The NMED uses this information, in addition to information obtained from other sources, to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with SIP regulations and additional EPA requirements. The SIP requires this information be made available to the public. Provisions concerning the handling of confidential data and proprietary business information are included in the SIP's regulations (20 NMAC Part 11.90). These rules specifically exclude from confidential treatment any records concerning the nature and amount of emissions reported by sources. We are proposing that the New Mexico SIP meets the requirements of CAA§ 110(a)(2)(F).

*(G) Emergency authority:* CAA § 110(a)(2)(G) requires a demonstration that the NMED has the authority to restrain any source from causing imminent and substantial endangerment to

public health or welfare or the environment. The SIP must include an adequate contingency plan to implement such authorities as necessary.

The AQCA provides the NMED and the Air Board with authority to address environmental emergencies, inclusive of contingency plans to implement emergency episode provisions.

Upon a finding that any owner/operator is unreasonably affecting the public health, safety or welfare, or the health of animal or plant life, or property, AQCA authorizes NMED to, after a reasonable attempt to give notice, declare a state of emergency and issue without hearing an emergency special order directing the owner/operator to cease such pollution immediately (NMSA 1978 74-2-10).

New Mexico promulgated the “Air Pollution Episode Contingency Plan for New Mexico,” which includes contingency measures, and these provisions were approved into the SIP on August 21, 1990 (55 FR 34013).

Pursuant to 40 CFR 51, Subpart H, *Prevention of Air Pollution Emergency Episodes*, on January 26, 1989, the Air Board adopted the *Air Pollution Contingency Plan for Bernalillo County* [8/21/91, 56 FR 38074; 40 CFR 52.1639, *Prevention of Air Emergency Episodes*], which is part of the SIP, which covers air pollution episodes and the occurrence of an emergency due to the effects of the pollutants on the health of persons.

(H) *Future SIP revisions*: CAA § 110(a)(2)(H) requires that States must have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

The AQCA requires the NMED to revise its SIP, as necessary, to account for revisions of

the NAAQS, new NAAQS, to attain and maintain the NAAQS, to abate air pollution, to adopt more effective methods of attaining the NAAQS, and to respond to EPA SIP calls concerning NAAQS adoption or implementation (NMSA 1978 sections 74-2-5(B)(1) and 74-2-5.2(B)).

Albuquerque-Bernalillo County's SIP is a compilation of regulations, plans and submittals that act to improve and maintain air quality in accordance with national standards. The authority to develop or revise the SIP is based on the authority to adopt new regulations and revise existing regulations to meet the NAAQS. NMSA 1978 section 74-7-5 gives the Air Board the authority to perform these functions. Section 74-7-5 also gives the Air Board the authority to adopt regulations to abate, control and prohibit air pollution throughout Albuquerque-Bernalillo County in accordance with the *State Rules Act*. Nothing in New Mexico's statutory or regulatory authority prohibits Albuquerque-Bernalillo County from revising the SIP in the event of a revision to the NAAQS. The AQCA specifically requires revisions to the SIP if the scenarios set forth in CAA section 110(a)(2)(H) occur.

(I) *Nonattainment areas*: The CAA section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas.

As noted in element C, above, EPA does not expect infrastructure SIP submissions to address subsection (I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. Instead, EPA will take action on part D attainment plan SIP submissions through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D.

*(J) Consultation with government officials, public notification, PSD and visibility*

*protection:* The SIP must meet the following three CAA requirements: (1) section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; and (3) prevention of significant deterioration of air quality and (4) visibility protection.

*(1) Interagency consultation:* As required by the AQCA, there must be a public hearing before the adoption of any regulations or emission control requirements and all interested persons must be given a reasonable opportunity to submit data, view documents, or argue orally or in writing and to examine testimony of witnesses from the hearing (NMSA 1978 section 74-2-6B, C, and D). In addition, the AQAC provides for the power and duty to “advise, consult, contract with and cooperate with local authorities, other states, the federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control.” (NMSA 1978 section 74-2-5.2(B)). Furthermore, New Mexico’s PSD SIP rules mandate public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, tribal authorities, and Federal Land Managers (FLMs) whose lands may be affected by emissions from the source or modification. The State’s Transportation Conformity SIP rules also provide procedures for interagency consultation, resolution of conflicts, and public notification. These rules apply to both New Mexico and Albuquerque-Bernalillo County.

*(2) Public Notification:* The submitted revisions provide the SIP regulatory citations requiring both the Air Board and NMED to regularly notify the public of instances or areas in which any NAAQS are exceeded, advise the public of the health hazard associated with such exceedances, and enhance public awareness of measures that can prevent such exceedances and



ways in which the public can participate in efforts to improve air quality. 20.11.82 NMAC, *Rulemaking Procedures – Air Quality Board*, stipulates notice requirements for rulemaking and is used as a guide for notice requirements when adopting SIPs.

(3) *PSD and Visibility Protection*: The PSD requirements here are the same as those addressed under (C). The New Mexico SIP requirements for both the state and Albuquerque-Bernalillo County relating to visibility and regional haze are not affected when EPA establishes or revises a NAAQS. Therefore, EPA has determined that there are no new visibility protection requirements due to the revision of the NAAQS, and consequently there are no newly applicable visibility protection obligations pursuant to infrastructure element J after the promulgation of a new or revised NAAQS.

(K) *Air quality and modeling/data*: The SIP must provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request (NMSA 1978 section 74-2-5.2(B)).

AQP has the duty, authority and technical capability to conduct air quality modeling, pursuant to the AQCA, in order to assess the effect on ambient air quality of relevant pollutant emissions; and can provide relevant data as part of the permitting and NAAQS implementation process (NMSA 1978 section 74-2-5.2(B) and 20.2.72 NMAC and 20.2.74 NMAC). AQP follows EPA guidelines for air dispersion modeling. Upon request, AQP will submit current and future data relating to air quality modeling to EPA.

Likewise, The NMED has the power and duty, under the AQCA to investigate and develop facts providing for the functions of environmental air quality assessment (20.2.72 NMAC and 20.2.74 NMAC). Past modeling and emissions reductions measures have been

submitted by the State and approved into the SIP.

The New Mexico AQCA authorizes and requires NMED to cooperate with the federal government and local authorities concerning matters of common interest in the field of air quality control, thereby allowing the agency to make such submissions to the EPA.

*(L) Permitting Fees:* The SIP must require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under CAA section 504, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by EPA.

The fee requirements of 20.11.2 NMAC have been approved by EPA as meeting the CAA requirements and were incorporated into the Albuquerque-Bernalillo County, New Mexico SIP [4/10/80, 45 FR 24468]. Albuquerque-Bernalillo County's title V operating permit program codified at 20.11.42 NMAC, *Operating Permits*, was approved by EPA on 9/8/04 [FR vol. 69, No. 173, pp. 54244-47]. In addition, see element (E) above for the description of the mandatory collection of permitting fees outlined in the SIP for the entire state.

*(M) Consultation/participation by affected local entities:* CAA § 110(a)(2)(M) requires that the SIP must provide for consultation and participation by local political subdivisions affected by the SIP.

See element J (1) and (2) for a discussion of the SIP's public participation process, the authority to advise and consult, and the PSD SIP's public participation requirements. Additionally, the AQCA also requires initiation of cooperative action between local authorities and the NMED, between one local authority and another, or among any combination of local

authorities and the NMED for control of air pollution in areas having related air pollution problems that overlap the boundaries of political subdivisions, and entering into agreements and compacts with adjoining states and Indian tribes, where appropriate (NMSA 1978 section 74-2-5.2(B)). The transportation conformity component of New Mexico's SIP requires that interagency consultation and opportunity for public involvement be provided before making transportation conformity determinations and before adopting applicable SIP revisions on transportation-related issues.

Additionally, with regard to the Air Board, the New Mexico State Statute section 74-2-5.2 *State Air Pollution Control Agency; Specific Duties and Powers of the Department*, states that, "The department is the state air pollution control agency for all purposes under federal legislation relating to pollution. The department is required to "advise, consult, contract and cooperate with local authorities, other states, the federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control."

### **III. EPA's Evaluation of CAA Section 128: State Boards and Heads of Executive Agency, Conflicts of Interest**

On August 6, 2015, New Mexico submitted a SIP revision that contains revisions to the New Mexico Statutes Annotated 1978 for inclusion into the SIP. The revisions that are necessary for inclusion into the State's SIP address the requirements of CAA section 128 in relation to State Boards/Heads of Executive Agency and Conflicts of Interest/Disclosure.

In this submittal, New Mexico demonstrated how State Boards or the head of an executive agency who approves CAA permits or enforcement orders disclose any potential conflicts of interest as required by CAA section 128. The State's Conflict of Interest Act and NM EIB Code of Conduct was initially approved into the SIP on June 1, 1999. This submission

updates the prior submission by providing an official change of name for the “Conflict of Interest Act” to “Governmental Conduct Act”, adding definitions, prohibits public officials from disclosing confidential information acquired from local government agency positions, more clearly defining contracts involving public officers or employees, expanding EIB from 5 to 7 members and correcting grammatical errors. The submission included a table specifically outlining all these changes. This table is included in the docket.

#### **IV. Proposed Action**

EPA is proposing to approve the August 6, 2015, and December 8, 2015 submitted revisions for the SIP for New Mexico and Albuquerque-Bernalillo County pursuant to the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2012 PM<sub>2.5</sub> NAAQS. The Table below outlines the specific actions EPA is proposing to approve. By this action, EPA is also approving revisions to the New Mexico SIP regarding State Boards or the head of an executive agency who approves CAA permits or enforcement orders for the State of New Mexico. The SIP revisions were submitted by the State to update the SIP with updated language from NMSA.

Table 1- Proposed Action on New Mexico Infrastructure SIP Submittal for various NAAQS

Element	2012 PM <sub>2.5</sub>
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)(i): Enforcement of SIP measures	A
(C)(ii): PSD program for major sources and major modifications	A
(C)(iii): Permitting program for minor sources and minor modifications	A
(D)(i): Prohibit emissions to other states which will (1) significantly contribute to nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with PSD requirements or (4) interfere with visibility protection	A
(D)(ii): Interstate and International Pollution Abatement	A
(E)(i): Adequate resources	A
(E)(ii): State boards	A
(E)(iii): Necessary assurances with respect to local agencies	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+
(J)(i): Consultation with government officials	A
(J)(ii): Public notification	A
(J)(iii): PSD	A
(J)(iv): Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

## Key to Table

A- Proposed Approval

+- Not germane to infrastructure SIPs

Based upon our review of these infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in these submissions or referenced in the Albuquerque-Bernalillo County, New Mexico or New Mexico SIP, EPA finds that New Mexico and Albuquerque-Bernalillo County have the infrastructure in place to address all applicable required elements of CAA sections 110(a)(1) and (2) to ensure that the 2012 PM<sub>2.5</sub>, NAAQS are implemented in the state and in Albuquerque-Bernalillo County.

We are proposing to approve the submitted revisions to the New Mexico SIP that provides emendation to the New Mexico Statutes Annotated 1978 and update the federally approved New Mexico SIP accordingly. Those include emendation to the following: New Mexico Statutes at Chapter 9 Department of Environment Act Article 7A-6 Secretary; duties and general powers; and 7A-11 Cooperation with the federal government; authority of secretary; single state agency status; Chapter 10 Public Officers and Employees Article 16-1 through 10-16-16 Governmental Conduct; and Chapter 74 Environmental Improvement Article 1 General Provisions and Article 2 Air Pollution.

#### **V. Incorporation by Reference**

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the New Mexico Statutes as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at the EPA Region 6 office (please contact Ms. Sherry Fuerst for more information).

#### **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).



**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference,  
Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: December 13, 2017.

**Samuel Coleman,**

*Acting Regional Administrator, Region 6.*

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